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In The

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

NO. 212

DAVID EARL TRAMMELL,

PETITIONER

versus

STATE OF ALABAMA,

RESPONDENT

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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INDEX

SUBJECT INDEX

	Page
Opinions of the Court Below	1
Jurisdiction	2
Question Presented	2
Constitutional Provision Involved	2
Statement	2
Summary of Argument	5
Argument	5
Conclusion	7
Certificate	8

TABLE OF CASES CITED

	Page
Breedlove v. State, 204 So. 2d 835	6
Busby v. Holman, 356 F. 2d 75	4
David Earl Trammel v. State, 220 So. 2d 258	1

STATUTES CITED

	Page
Code of Alabama 1940, Title 14, Section 331	5
Code of Alabama 1940, Title 14, Section 337	6
Code of Alabama 1940, Title 14, Section 338	6
Code of Alabama 1940, Title 15, Section 97	6
Code of Alabama 1940, Title 15, Section 259, Form 76	5
United States Code:	
Title 28, Section 1257 (3)	2
Article 4, Section 2, Constitution of the United States	2
Fifth Amendment to the Constitution of the United States	2
Sixth Amendment to the Constitution of the United States	2
Fourteenth Amendment to the Constitution of the United States	2

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BRIEF AND ARGUMENT FOR RESPONDENT

I

OPINIONS OF THE COURT BELOW

The Opinion of the Court of Appeals of Alabama is reported as follows:

David Earl Trammell v. State of Alabama, 220 So. 2d 258. The Supreme Court of Alabama denied Certiorari 220 So. 2d 258.

II

JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama rendered on October 22, 1968. Application for rehearing was denied November 12, 1968. A petition to the Supreme Court of Alabama for writ of certiorari was denied on March 13, 1969.

Petitioner applies under the provisions of Title 28, Section 1257(3), United States Code.

III

QUESTION PRESENTED

The petition in this case raises the following issue:

Can the plea of guilty to Count One of an indictment reading in Code form be construed to be of a crime committed in another state?

IV

CONSTITUTIONAL PROVISIONS INVOLVED

Article 4, Section 2, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

V

STATEMENT OF THE CASE

Petitioner was charged upon an indictment (R. p. 2) found by the Grand Jury of Jefferson County, Alabama,

January Term 1967, which said indictment contained three counts in Code form as follows:

"INDICTMENT #14052

"THE STATE OF ALABAMA) CIRCUIT COURT
JEFFERSON COUNTY) OF TENTH
JUDICIAL
CIRCUIT

January Session 1967

"The grand jury of said county charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL, feloniously took and carried away One two-door Ford Mustang automobile of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks.

"2nd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL, feloniously took and carried away in the State of Tennessee, One two-door Ford Mustang of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks, and brought said motor vehicle into the County of Jefferson in this State.

"3rd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL did buy, receive, conceal or aid in concealing One two-door Ford Mustang Automobile of the value of Eighteen Hundred

Ninety-Five Dollars, the personal property of Laura Hendricks, knowing that it was stolen and not having the intent to restore it to the owner, against the peace and dignity of the State of Alabama.

"Earl C. Morgan
District Attorney, Tenth Judicial
Circuit of Alabama."

On October 9, 1967, petitioner entered a plea of " . . . guilty to grand larceny as charged in the indictment . . . " (R. p. 7) The trial court entered a judgment finding petitioner " . . . guilty of grand larceny as charged in the indictment . . .," (R. p. 7) and sentencing petitioner to imprisonment for a term of four years. Petitioner then made application for probation, which application was passed until October 27, 1967, for a hearing (R. p. 7).

On October 27, 1967, the trial court denied petitioner's application for probation and petitioner gave notice of appeal to the Court of Appeals of Alabama (R. p. 8).

On October 22, 1968, the Court of Appeals of Alabama affirmed the lower court's decision holding:

"Appellant pled guilty in open court to 'grand larceny.' Count One of the indictment follows Form 66, Sec. 259, Tit. 15, Code of Alabama 1940.'

"Hence, all questions as to the remaining counts in the indictment are immaterial. The plea of guilty under Busby v. Holman, 356 F. 2d 75 (5th Cir. 1966) requires that the judgment below be affirmed."

VI

SUMMARY OF ARGUMENT

Where petitioner has voluntarily entered a plea of guilty to grand larceny in Count One of an indictment in Code Form, no constitutional right is violated and no federal question presented.

VII

ARGUMENT

Petitioner argues that the State of Alabama lacked jurisdiction to try him. He cites applicable law to the effect that a particular sovereignty has no extra territorial jurisdiction of offenses committed outside their territorial boundaries.

The indictment returned against petitioner contained three counts: No. 1 grand larceny, No. 2 bringing stolen property into the State, and No. 3 buying, selling, receiving, concealing or aiding in concealing stolen property.

He voluntarily entered a plea of guilty to grand larceny, which was Count One of the indictment.

Title 14, Section 331, Code of Alabama 1940, defines grand larceny.

Count One followed the Code Form No. 66 of Title 15, Section 259, Code of Alabama 1940.

Count No. 2 of the indictment charged the offense of bringing stolen property into the State. Count No. 2 follows

the wording of the indictment in *Breedlove v. State*, 204 So. 2d 835.

Title 15, Section 97, Code of Alabama 1940, provides:

"§ 97. Bringing stolen property into this state.—When property is stolen elsewhere and brought into this state, the jurisdiction is in any county into which the property is brought."

The above section establishes the jurisdiction in such cases.

For the section dealing with such offense, attention is directed to Title 14, Section 337, Code of Alabama 1940, which provides:

"§ 337. Bringing stolen property into this state.—Any person who fraudulently brings into this state any personal property which he knew was stolen elsewhere, shall, on conviction, be punished as if had stolen it in this state."

Appellant in open court and represented by attorney, withdrew his prior plea of not guilty and entered a plea of guilty of grand larceny. This charge is set out in Count No. 1 of the indictment in Code Form.

Petitioner does not discuss Count No. 3 which is buying, receiving, concealing, etc., stolen property as set out in Title 15, Section 338, Code of Alabama 1940.

Thus, it is seen that the indictment returned against petitioner contained three counts: (1) grand larceny, (2) bringing stolen property into the state, and (3) buying, receiving, concealing, etc., stolen property.

Petitioner, represented by counsel, withdrew his plea of not guilty and entered a plea of guilty of grand larceny.

There is nothing that infers that the property was stolen in Tennessee. Out of an abundance of caution, the three counts were put in the indictment and only Count One is applicable. It alleges the commission of grand larceny "against the peace and dignity of the State of Alabama."

VIII

CONCLUSION

For the foregoing reasons, respondent submits that the petitioner was properly convicted by a Court having jurisdiction both of the person and of the offense and, therefore, no constitutional rights of accused were violated. No Federal question is presented to this Court. Therefore, the writ of certiorari in this case should be denied.

Respectfully submitted,

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IX

CERTIFICATE

I, David W. Clark, one of the attorneys for respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26TH day of June, 1969, I served a copy of the foregoing brief and argument upon one of the attorneys for petitioner, by mailing a copy in a duly addressed envelop to said attorney of record, as follows:

To: Honorable William B. McCollough, Jr.
Attorney at Law
908 Frank Nelson Building
Birmingham, Alabama 35203

David W. Clark

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